IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Jagdish Chandra v. State of Raj. & Ors.

(1) S.B.CIVIL WRIT PETITION NO.1787/2002

Gaurishankar Bhandari v. State of Raj. & Ors.

(2) S.B.CIVIL WRIT PETITION NO.1830/2002

Petitions under Article 226 of the Constitution of India.

Date of Order : 2nd March, 2006

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.P.Joshi, for the petitioners.
Mr. Lalit Kawadia]
Mr. R.G.Purohit] for the respondents.
Mr. Rajesh Panwar]

BY THE COURT :

Being based on similar facts and legal contentions, these two petitions are disposed of by this common order.

At the threshold of hearing, counsel for the petitioners has narrow down the claim made in the petitions to the extent of issuing a direction to respondent Urban Improvement Trust, Udaipur to adhere the provisions of Urban Improvement Trust Act, 1959

(hereinafter referred to as “the Act of 1959”), if any action is desired and required to dispossess the petitioners from the land in question.

In the case of Gaurishankar Bhandari, the petitioner while seeking direction for regularisation of possession over the land in question, averred that he is running a provision store on the land in dispute since 1984 and for that purpose he is having a valid licence from the Municipal Council, Udaipur as well as from the Rajasthan Agricultural Marketing Society, Udaipur. The petitioner to establish his possession over the land concerned also placed on record a telephone bill and electricity bill and a certificate of verification of weight and measurements issued by the Department of Industries.

In the petition preferred by Jagdish Chandra, to establish possession over the land in dispute since 1984, the petitioner has placed on record a receipt issued by the Inspector of weight and measurements, Department of Industries, licence granted by Municipal Council, Udaipur to run a restaurant and to sale therefrom sweets, beetles etc. The petitioner has also placed on record a copy of the order to restore water connection and a bill for using electricity.

The petitioners preferred the present petitions apprehending their dispossession from the

land in question by Urban Improvement Trust, Udaipur in arbitrary manner and without adhering the legal course. It is alleged by the petitioners that the land concerned vests with Bhopal Housing Cooperative Society and the Urban Improvement Trust, Udaipur just to support that society want to remove them from the land that is under their possession since 1984.

The Urban Improvement Trust, Udaipur in its reply to writ petition stated that the land in question is part of a housing scheme promoted and developed by it in the name of Ravindra Nagar. The construction of houses and shopping complex was got done by the Urban Improvement Trust through Rajasthan Housing Board and the petitioners were not having possession over any part of the land which is developed as Ravindra Nagar when the area was handed over to Urban Improvement Trust by the Rajasthan Housing Board.

Shri Lalit Kawadia, learned counsel for the Urban Improvement Trust, Udaipur with all vehemence urged that the petitioners want to grab valuable land by establishing their alleged old possession by placing false facts before this Court. While dealing with the documents placed on record alongwith writ petition preferred by Shri Gaurishankar the counsel for the respondent has pointed out the averments made in para 8 of the writ petition, which reads as under:-

> "That the petitioner also applied for a License for wholesale business to the Krishi Upaj Mandi Samiti, Udaipur and a Permanent License was granted in his favour by the Krishi Upaj Mandi Samiti, Udaipur vide License dated 31.12.1996. A photostat copy of the Permanent License dated 31.12.1996 is submitted herewith and marked as ANNEXURE/4."

According to counsel for the respondent Urban Improvement Trust a permanent licence for wholesale business could be granted by Krishi Upaj Mandi Samiti with regard to Mandi area only and the licence placed on record also pertains to that but the petitioner only with a view to misled this Court cited the same. The Ravindra Nagar is not the mandi area, therefore, the licence for wholesale business according to counsel for the respondent do not relate to the land in dispute. The respondent further said that other documents too are not concerned with the site in question as the electricity bills refer to 04, Housing Board Road, the licence granted by Municipal Council, Udaipur to run provision store relates to House No.79, Ravindra Nagar and the telephone bill also not b ear address which may be related with the disputed site.

With the factual background above the counsel for the respondent Urban Improvement Trust has urged that the petitioner has approached this Court neither

with clean hands nor his conduct is befitting to maintain the petition. It is also contended by learned counsel that the petition is premature as no injury is yet caused and beside that complex question of disputed facts cannot be looked into by this Court while exercising powers under Article 226 of the Constitution of India.

On the same argument, counsel for the Urban Improvement Trust, Udaipur pressed for rejection of writ petition preferred by Jagdish Chandra. The counsel pointed out from the documents placed on record by petitioner Shri Jagdish Chandra that those documents also not relate or atleast not give definite reference of the disputed site.

Heard counsel for the parties.

It is the position admitted that the petitioners are seeking a writ apprehending injury. No action has yet been taken against them. The main contention of the petitioners is that they are having long possession over the land and they cannot be dispossessed therefrom without adhering the provisions of Section 92-A of the Act of 1959 even if they be treated trespassers.

The petitioners to prove their possession have placed certain documents on record reference of

which is already given in preceding paras. I have examined each and every document and by reading of those documents no definite finding can be given so as to the fact that they pertains to the site in dispute. The electricity bill placed on record in the case of Shri Gaurishankar relates to 04, Housing Board Road, but it nowhere mentions shops No.6, 7 and 8, Ravindra Nagar. Similarly, the licence granted by Municipal Council, Udaipur to run a restaurant and to sale sweets, pan, confectionery etc. is also pertaining to Ravindra Nagar, Ward No.14, House No.79. The verification certificate issued by the Inspector, Weight and Measurements and the telephone bill issued by Bharat Sanchar Nigam Ltd. also not give any definite reference of the site. The permanent licence issued by Krishi Upaj Mandi Samiti, Udaipur in no manner helps the petitioner to prove his possession. In para 8 of the writ petition the petitioner has stated that he applied for a licence for wholesale business and permanent licence was granted in his favour by Krishi Upaj Mandi Samiti, Udaipur on 31.12.1996. A licence for wholesale business can be issued by Krishi Upaj Mandi Samiti only for operation in mandi area and not in housing scheme developed by Urban Improvement Trust.

In the case of Jagdish Chandra also the documents annexed with the writ petition by the petitioner do not prove definite possession of the

petitioner on the land in dispute. The order for restoration of water connection relates to a site in Pratap Nagar, Opposite Janjati Karyalaya, the water consumption bill relates to 36, Ravindra Nagar, “C” Block and the licence issued by Municipal Council, Udaipur simply mentions Ravindra Nagar, as such there is no definite evidence to prove possession of the petitioner on the land in question. In view of it in the case of Jagdish Chandra also no direction can be given without verifying the definite possession of the petitioner over the land in dispute to Urban Improvement Trust, Udaipur to adhere the provisions of Section 92-A of the Act of 1959, if it want to dispossess the petitioner from the land in question.

The documents referred above which are placed on record by the petitioner in no case prove possession of the petitioner over the land in question. The petitioner though has confined relief prayed to the extent of seeking a direction for Urban Improvement Trust, Udaipur to proceed in accordance with law, if it want to dispossess the petitioner from the land in question but as the petitioner failed to prove his definite possession over the land, no such direction can be given.

The fact with regard to possession over the land cannot be settled on basis of documents placed on record by the petitioners and this fact is required to

be determined by adducing evidence before the competent civil court as this Court does not consider itself in the instant matter sufficiently equipped to do so while exercising powers under Article 226 of the Constitution of India.

Beside the above, no action has yet been taken by the Urban Improvement Trust, Udaipur. The petitioners are approaching this Court apprehending injury but there is no valid reason to believe that the Urban Improvement Trust will proceed for removal of encroachment without adhering the provisions of the Act of 1959.

In view of whatever discussed above, no relief, as claimed by the petitioners, can be given in present petitions for writ.

The writ petitions are accordingly dismissed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.